APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/754,492	01/04/2001	G. Stephen LeGraw	V144.101.102	2903

25281 7590 09/05/2006		EXAMINER	
DICKE, BILLIG & CZAJA, P.L.L.C.		HARBECK, TIMOTHY M	
FIFTH STREET TOWERS			
100 SOUTH FIFTH STREET, SUITE 2250		ART UNIT	PAPER NUMBER
MINNEAPOLIS, MN 55402		3628	

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/754,492	LEGRAW, G. STEPHEN
	Examiner	Art Unit	
	Timothy M. Harbeck	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 May 2006*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *61-120* is/are pending in the application.

  4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *61-120* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

  a)☐ All b)☐ Some * c)☐ None of:

  1.☐ Certified copies of the priority documents have been received.

  2.☐ Certified copies of the priority documents have been received in Application No. _____.

  3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

  * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
  Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
  Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 61-120 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Fitzgerald in view of Read (Paul Read. "Business Brokers Bag Buyers." Journal of

Business. Spokane: May 12, 1994, Vol.9, Iss. 9; Sec. 1. pg1).

Re Claim 61: Fitzgerald discloses a method for the exchange, analysis, and

reporting of performance data in businesses with time-dependent inventory comprising

the steps of:

- Collecting private company information from a user at a first location

  (Column 3, lines 50-55), the private company information having an

  exchange data portion (Column 9, lines 12-21).

- Transmitting only the exchange data portion to a central location (Column

  9, lines 18-20) via the network (Column 4, lines 63-67)

- Defining an exchange data set at the central location (Column 3, lines 23-

  27)

- Updating the exchange data set using the exchange data portion (Column

  7, lines 15-25)

- Determining an output data set from the exchange data set (Column 9 line 61- Column 10 line 6)

- Transmitting the output data set from the central location to the user at the first location via the network (Column 3, lines 28-32)

- Wherein the private company is part of a commercial industry (Time Dependent Industry Businesses; Column 3, lines 6-7), and the output data set includes statistical averages for the commercial industry (Figs 8, 9A, 9B)

Fitzgerald does not explicitly disclose the steps wherein the private company information includes a confidential data portion, which includes confidential identifying information for a private company that corresponds with the private company information and wherein the exchange data portion is characterized by an absence of confidential identifying information for the private company.

Read discloses the process of utilizing business brokers for the sale of a private business. These business brokers collect private company information for the purposes of valuing the business and presenting a detailed marketing package to potential buyers of the business. As Read discloses this package is "actually two packages. Brokers typically first prepare a "teaser" package that's given to a large number of potential buyers. It provides basic information about the company for sale, but nothing that would identify the company" (Page 5). In other words there is a confidential portion, including identifying information that is withheld from this first teaser package that is exchanged to potential buyers. A second more detailed package is only then delivered to those

potential buyers that show serious and legitimate interest in buying the business. It would have been obvious to a person of ordinary skill in the art at the time of invention to modify Fitzgerald to include these steps in order to withhold certain information from the exchange process that could be damaging to the company. Identifying information in connection with financial information, depending on the particular industry, may be used by competitors against the disclosing company. For instance in the hotel industry example given, one particular hotel knowing that their main competitor is charging a certain rate, might undercut that rate in order to attract more business. However, by withholding identifying information, each hotel gets a basic view of their market, but not their specific competitors.

Re Claim 62-63: Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses wherein the step of transmitting only the exchange data portion to a central location includes the step of transmitting only the exchange data portion to a central location via a network and wherein the network includes an Internet communication link (Column 4, lines 1-2).

Re Claim 64: Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the steps of:

- Defining one or more groups (Column 3, lines 14-18; the reports are representative of similar business in a particular market area)

- Determining one or more groups associated with the collected information (Column 3, lines 14-18; inherent in the statement that

"businesses in a market area can reliably exchange daily performance

data;" must be a way to determine the scope of the market area)

Re Claim 65: Fitzgerald in view of Read discloses the claimed method supra

and Fitzgerald further discloses the step of attaching the determined groups to the

exchange data portion (See Fig 8; the members of the group are attached with the

exchange portion).

Re Claim 66: Fitzgerald in view of Read discloses the claimed method supra

and Fitzgerald further discloses the step of defining the user as a qualified user (Column

6, lines 35-39 and Column 12 lines 11-13).

Re Claim 67: Fitzgerald in view of Read discloses the claimed method supra

and Fitzgerald further discloses the step of defining the exchange data set as a qualified

user exchange data set (Column 6, lines 35-39). The system "can be used to provide

processed performance data only to customers that input data into the system."

Re Claim 68: Fitzgerald in view of Read discloses the claimed method supra

and Fitzgerald further discloses the step wherein transmitting the output data set from

the central location to user at the first location is performed via an Internet

communication link (Column 4, lines 1-2).

Re Claim 69, 71 and 72: Fitzgerald in view of Read discloses the claimed

method supra and while not explicitly disclosing the step comprising storing the output

data set, the collected information and the confidential data portion at the first location,

the step of saving information on an individual computer is notoriously well known in the

art and would have been obvious to anyone of ordinary skill. Furthermore, Fitzgerald

notes that the user interface includes a CPU and associated memory, from which

storage capabilities would be obvious.

Re Claim 70: Fitzgerald in view of Read discloses the claimed method supra

and Fitzgerald further discloses the step of storing the output data set at the central

location (Column 8, lines 24-27).

Re Claim 73: Fitzgerald in view of Read discloses the claimed method and

Fitzgerald further discloses the step of determining the output data set further comprises

the steps of:

- Defining a statistical model (FIG 8; Column 10, line 28 -Column 11 line 40)

- Generating a statistical data set using the exchange data set and the

  statistical model (FIG 8)

- Storing the statistical data set as the out put data set (Column 8, lines 22-

  27)

Re Claim 74: Fitzgerald in view of Read discloses the claimed method supra

and Fitzgerald further discloses the step of receiving a second exchange data portion

from a second user; updating the exchange data set using the second exchange data

portion; and transmitting the output to the second user (Column 3, lines 47-55; "plurality

of business entities;" each would have separate data relative to their business to

exchange).

Re Claim 75: Fitzgerald in view of Read discloses the claimed method supra

and Fitzgerald further discloses the steps of:

- Defining a graphical user interface including a webpage (Column 6, lines 60-63)

- Collecting information from the user via the webpage (Column 7, lines 11-14)

Re Claim 76: Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step of accessing the central controller via the webpage using a login routine, wherein the login routine determines whether a user is allowed to access the central controller (Column 7, lines 3-10).

Re Claim 77: Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step wherein transmitting the output data set to the user is performed at the completion of the login routine (Column 7, lines 11-37)

Re Claim 78: Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step of generating a graph from the output data set (Figs 9A and 9B).

Re Claim 79: Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step wherein the step of collecting information from a user includes the step of collecting benchmark information (Column 1, line 39 – Column 2 line 30). The invention of Fitzgerald is designed to collect pertinent information from a plurality of business competing in a similar market and to produce an output of an individual business' success (benchmark) in relation to its market (FIG 8).

Re Claim 80: Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step wherein the benchmarking information is asset

information (FIG 8, Column 10, lines 28-46). Fitzgerald uses the hotel industry as an

example and in the benchmarking report in figure 8; the statistics are based upon the

available hotel rooms (the asset of any hotel), and the derivatives thereof.

Re Claims 81-84: Fitzgerald in view of Read discloses the claimed method

supra and while not explicitly disclosing the steps wherein the asset information

includes public business valuation information, private business valuation information,

portfolio information or capital structure information, the system of Fitzgerald could

easily be adapted to receive and output data that is relevant to any market. The hotel

example is used (Column 1 line 38- Column 2 line 30), with information such as

Occupancy and Average Daily Rate submitted and outputted as statistics relevant to

that particular industry. However every industry is different, and depending upon the

market on which the system is operating, the parameters of the system will change. It

would have been obvious to anyone skilled in the ordinary art at the time of invention to

adapt the system of Fitzgerald in view of Read in order to change the parameters

submitted relative to the market, because performance measurements in one industry

are often time inconsequential or non-existent in another industry and would therefore

provide no relevant information for that market segment.

Re Claim 85: Fitzgerald in view of Read discloses the claimed method supra

and Fitzgerald further discloses the step wherein the benchmarking information is

performance information. Fitzgerald states that ADR and Occupancy are "performance

data" terms in the hotel industry (Column 2, lines 4-9), and these measurements are

clearly used to benchmark individual hotels in the output report (Fig 8).

Re Claim 86: Fitzgerald in view of Read discloses the claimed method supra

and while not explicitly disclosing the step of collecting public company commercial

information from a published public exchange market, this process is old and well

known in the art and would have been obvious to anyone of ordinary skill. The mere

fact that this is published information means that anyone can collect and analyze it, and

this process has been done via a network for years. One would be motivated to add

this feature to the disclosure of Fitzgerald in view of Read in order to create an even

larger cache of industry information, in order to further locate the users position in the

overall market.

Re Claim 87: Fitzgerald in view of Read discloses the claimed method supra

and Fitzgerald further discloses the step wherein the statistical averages include at least

one of average deal statistics, average valuation statistics, average collateral statistics,

average operating performance statistics and average operating performance data

(Figure 9A). Fitzgerald explicitly discloses ADR as a performance statistic (Column 2,

lines 4-9), and the output shown in figure 9A shows the statistic averages of ADR for the

market.

Re Claim 88: Fitzgerald discloses a method for the exchange, analysis, and

reporting of performance data in businesses with time-dependent inventory comprising

the steps of:

- Collecting commercial information via a webpage from a user, wherein

    the commercial data information relates to a private company in an

    industry (Column 3, lines 50-55)

- Generating a commercial data record from the commercial data information (Column 9, lines 12-21)

- Defining a commercial statistical analysis system having an exchange data set (Column 3, lines 23-27)

- Transmitting only the exchange subrecord via a network communication link to the commercial statistical analysis system (Column 9, lines 18-20)

- Updating the exchange data set using the exchange subrecord (Column 7, lines 15-25)

- Generating a commercial statistical data set for the industry using the commercial statistical analysis system (FIG 8), wherein the commercial data set includes statistical averages for the industry (FIG 9a, 9b)

- Transmitting the commercial statistical data set to the user (Column 3, lines 28-32)

Fitzgerald does not explicitly disclose wherein the commercial data record includes a confidential subrecord that identifies a private company and wherein the commercial statistical data set is configured to protect an identity of the private company from other users with access to the commercial statistical data set.

Read discloses the process of utilizing business brokers for the sale of a private business. These business brokers collect private company information for the purposes of valuing the business and presenting a detailed marketing package to potential buyers

of the business. As Read discloses this package is "actually two packages. Brokers

typically first prepare a "teaser" package that's given to a large number of potential

buyers. It provides basic information about the company for sale, but nothing that would

identify the company" (Page 5). In other words there is a confidential portion, including

identifying information that is withheld from this first teaser package that is exchanged to

potential buyers. It would have been obvious to a person of ordinary skill in the art at

the time of invention to modify Fitzgerald to include these steps in order to withhold

certain information from the exchange process that could be damaging to the company.

Identifying information in connection with financial information, depending on the

particular industry, may be used by competitors against the disclosing company. For

instance in the hotel industry example given, one particular hotel, knowing that their

main competitor is charging a certain rate, might undercut that rate in order to attract

more business. However, by withholding identifying information, each hotel gets a basic

view of their market statistics, but not their specific competitors.

Re Claim 89: Fitzgerald in view of Read discloses the claimed method supra

and Fitzgerald further discloses the step wherein transmitting the commercial data set

from the commercial statistical analysis system to the user is completed via the network

communication link (Column 4, lines 1-2).

Re Claims 90-91: Fitzgerald in view of Read discloses the claimed method

supra and Fitzgerald further discloses the step of storing the commercial statistical data

set at the commercial statistical analysis system (Column 8, lines 24-27).

Re Claims 92-93: Fitzgerald in view of Read discloses the claimed method supra and while not explicitly disclosing the step comprising storing the collected information at the location of the user and storing the confidential sub record at the location of the user, the step of saving information on an individual computer is notoriously well known in the art and would have been obvious to anyone of ordinary skill. Furthermore, Fitzgerald notes that the user interface includes a CPU and associated memory, from which storage capabilities would be obvious.

Re Claim 94: Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step of

- Defining a statistical model (FIG 8; Column 10, line 28 -Column 11 line 40)

- Generating a commercial statistical data set using the exchange data set and the statistical model (FIG 8, 9a, 9b)

Re Claim 95: Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step of receiving a second exchange subrecord from a second user; and updating the exchange data set using the second exchange subrecord (Column 3, lines 47-55; "plurality of business entities;" each would have separate data relative to their business to exchange)

Re Claim 96: Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step of accessing the commercial statistical analysis system via the webpage using a login routine, wherein the login routine determines

whether a user is allowed to access the commercial statistical analysis system (Column 7, lines 3-10).

Re Claim 97: Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step wherein transmitting the commercial statistical data set to the user is performed at the completion of the login routine (Column 7, lines 11-37)

Re Claim 98: Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step of generating a graph of the commercial statistical data set (FIG 9a, 9b).

Re Claim 99: Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step of collecting information from a user includes the step of collecting asset information (FIG 8, Column 10, lines 28-46). Fitzgerald uses the hotel industry as an example and in the benchmarking report in figure 8; the statistics are based upon the available hotel rooms (the asset of any hotel), and the derivatives thereof.

Re Claims 100 and 101: Fitzgerald in view of Read discloses the claimed method supra and while not explicitly disclosing wherein the asset information includes public business valuation, private business valuation and other statistical information, the system of Fitzgerald could easily be adapted to receive and output data that is relevant to any market. The hotel example is used (Column 1 line 38- Column 2 line 30), with information such as Occupancy and Average Daily Rate submitted and outputted as statistics relevant to that particular industry. However every industry is

different, and depending upon the market on which the system is operating, the parameters of the system will change. It would have been obvious to anyone skilled in the ordinary art at the time of invention to adapt the system of Fitzgerald in order to change the parameters submitted relative to the market, because performance measurements in one industry are often time inconsequential or non-existent in another industry and would therefore provide no relevant information for that market segment.

Re Claim 102: Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step of determining whether the user is a qualified user (Column 6, lines 35-39 and Column 12 lines 11-13).

Re Claim 103: Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step of defining a qualified user exchange data set, wherein the qualified user exchange data set is allowed to be accessed only by the qualified user (Column 6, lines 35-39)

Re Claim 104: Fitzgerald in view of Read discloses the claimed method supra and while not explicitly disclosing the step of defining the exchange data set to include the qualified user exchange data set as a subset of the exchange data set, it would have been obvious to anyone skilled in the ordinary art for the system of Fitzgerald to create a broader data set, perhaps involving surrounding markets in order to create a larger view of the particular industry. In this manner, a user can see not only large-scale statistics, but local statistics of a particular market which would more accurately reflect the position of the business.

Re Claim 105: Fitzgerald in view of Read discloses the claimed method supra and Fitzgerald further discloses the step of defining the network communication link in include an Internet communication link (Column 4, lines 1-2).

Re Claim 106: Further system claim would have been obvious to perform previously rejected method claim 61 and is therefore rejected using the same art and rationale.

Re Claim 107: Fitzgerald in view of Read discloses the claimed system supra and Fitzgerald further discloses wherein the user is a qualified user and the commercial statistical data set is accessible only by one or more qualified users (Column 6, lines 35-39)

Re Claim 108: Fitzgerald in view of Read discloses the claimed system supra and Fitzgerald further discloses wherein

- A first user interface located at a first location with the user (FIG 1A, 200)

- Wherein the first user interface is in communication with the commercial information exchange system via the network, for transmitting the exchange record from the first user interface to the commercial information exchange system and for transmitting the commercial statistical data set to the first user from the commercial information exchange system (FIG 1a, 1b)

Re Claim 109: Fitzgerald in view of Read discloses the claimed system supra and Fitzgerald further discloses wherein the network includes the Internet (Column 4, lines 1-2).

Re Claim 110: Fitzgerald in view of Read discloses the claimed system supra

and Fitzgerald further discloses wherein the exchange system controller further includes

a web server (Column 4, lines 42-50)

Re Claim 111: Fitzgerald in view of Read discloses the claimed system supra

and Fitzgerald further discloses wherein the exchange system controller includes a

query manager for managing queries between the user and the commercial information

exchange system (Column 7, lines 11-14).

Re Claim 112: Fitzgerald in view of Read discloses the claimed system supra

and Fitzgerald further discloses wherein the exchange system controller includes a

statistical model, wherein the commercial statistical data set is generated using the

exchange data set and the statistical model (Column 3, lines 23-27).

Re Claims 113-119: Further computer readable medium claims would have

been obvious to perform previously rejected method claims 61-62, 73-74, 76-77 and 82

respectively and are therefore rejected using the same art and rationale.

Re Claim 120: Fitzgerald in view of Read discloses a method for the exchange,

analysis, and reporting of performance data in businesses with time-dependent

inventory comprising the steps of:

- Collecting private company data information including business valuation
  and other statistical data via a webpage from a user associated with the
  private company wherein the private company is part of a commercial
  industry (Column 3, lines 14-22)

- Generating a private company data record from the private company data information (Column 3, lines 23-27), including an exchange subrecord (Column 9, lines 12-21)

- Defining a statistical analysis system having an exchange data set and at least one statistical model (Fig 8, Column 3, lines 23-27)

- Transmitting only the exchange subrecord to the statistical analysis system (Column 3, lines 28-32)

- Updating the exchange data set using the exchange subrecord (Column 7, lines 15-25)

- Storing the updated exchange data set to the statistical analysis system (Column 8, lines 24-27)

- Generating a private company statistical data set using the statistical analysis system based upon the updated exchange data set and the at least one statistical model, wherein the private company statistical data set includes statistical averages for the commercial industry, the statistical averages including at least one of average deal statistics, average valuation statistics, average collateral statistics, average operating performance statistics and average operating performance data (SEE FIG 8, 9a, 9b)

- Transmitting the private company statistical data set to one or more qualified users, wherein the qualified user is defined as a user who

provides exchange sub records to the statistical analysis system (Column

6, lines 35-39).

Fitgerald does not explicitly disclose

- Generating a private company data record from the private company data

  information, including a confidential subrecord and

- Wherein the commercial statistical data set is configured to protect an

  identity of the private company from other users with access to the

  commercial statistical data set

Read discloses the process of utilizing business brokers for the sale of a private

business. These business brokers collect private company information for the purposes

of valuing the business and presenting a detailed marketing package to potential buyers

of the business. As Read discloses this package is "actually two packages. Brokers

typically first prepare a "teaser" package that's given to a large number of potential

buyers. It provides basic information about the company for sale, but nothing that would

identify the company" (Page 5). In other words there is a confidential portion, including

identifying information that is withheld from this first teaser package that is exchanged to

potential buyers. It would have been obvious to a person of ordinary skill in the art at

the time of invention to modify Fitzgerald to include these steps in order to withhold

certain information from the exchange process that could be damaging to the company.

Identifying information in connection with financial information, depending on the

particular industry, may be used by competitors against the disclosing company. For

instance in the hotel industry example given, one particular hotel knowing that their

main competitor is charging a certain rate, might undercut that rate in order to attract

more business. However, by withholding identifying information, each hotel gets a basic

view of their market, but not their specific competitors.

The references do not explicitly disclose the step of storing the confidential

subrecord at the location of the user, the step of saving information on an individual

computer is notoriously well known in the art and would have been obvious to anyone of

ordinary skill. Furthermore, Fitzgerald notes that the user interface includes a CPU and

associated memory, from which storage capabilities would be obvious.

Response to Arguments

Applicant's arguments, see Remarks, filed 5/15/2006, with respect to the

rejection(s) of claim(s) 61-120 under U.S.C. 102 and 103 have been fully considered

and are persuasive. Therefore, the rejection has been withdrawn. However, upon

further consideration, a new ground(s) of rejection is made in view of Read.

Read discloses the process of utilizing business brokers for the sale of a private

business. These business brokers collect private company information for the purposes

of valuing the business and presenting a detailed marketing package to potential buyers

of the business. As Read discloses this package is "actually two packages. Brokers

typically first prepare a "teaser" package that's given to a large number of potential

buyers. It provides basic information about the company for sale, but nothing that would

identify the company" (Page 5). In other words there is a confidential portion, including

identifying information that is withheld from this first teaser package that is exchanged to

potential buyers. This appears to be the crux of the applicants argument with regards to

the Fitzgerald reference and the independent claims. Furthermore the examiner has

given what he believes is a proper statement as to why a person of ordinary skill in the

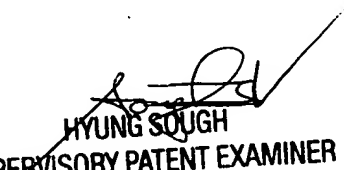art would be motivated to modify the Fitzgerald reference in view of Read.

In response to applicants argument that Fitzgerald is specifically directed toward

collection of otherwise private information and teaches away from receiving information

that is otherwise untimely, the examiner disagrees. While Fitzgerald teaches a specific

application in relation to time dependent industries, the reference would be just as

applicable to the collection of information from non-TDI business. Use of the invention

for non-TDI business does not depart from the spirit or scope of the invention, a method

for the exchange, analysis, and reporting of performance data in a business, and

therefore Fitzgerald cannot be thought to teach away from the claimed invention.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Timothy M. Harbeck whose telephone number is 571-

272-8123. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Hyung S. Sough can be reached on 571-272-6799. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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